

New Link, Ltd., Cherlayne, Inc., Inn Site, Inc., Forrer Community Living Ctr., Inc., and Lafayette Special Care Ctr., Inc. and Council 25, American Federation of State, County and Municipal Employees, AFL-CIO. Case 7-CA-47639

December 16, 2004

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on July 1, 2004, the General Counsel issued the complaint on September 1, 2004, against New Link, Ltd., Cherlayne, Inc., Inn Site, Inc., Forrer Community Living Ctr., Inc., and Lafayette Special Care Ctr., Inc., collectively referred to as the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the Act. The Respondent failed to file an answer.

On November 9, 2004, the General Counsel filed a Motion for Default Judgment with the Board. On November 16, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was filed by September 15, 2004, all the allegations in the complaint would be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated September 30, 2004, notified the Respondent that unless an answer was received by October 7, 2004, a motion for default judgment would be filed.

By letter dated October 7, 2004, the Respondent requested an extension of time to file an answer. On October 15, 2004, the Regional Director issued an Order Extending Time to file an Answer to October 21, 2004. Nevertheless, the Respondent has failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, with facilities in Detroit, Michigan, and Lincoln Park, Michigan, has been engaged in the management and operation of adult foster care homes. The Respondent's New Link, Ltd. facility, herein also called the New Link facility, is located at 14531 Vaughn, Detroit, Michigan. The New Link facility is the only facility involved in this proceeding.

During calendar year 2003, the Respondent, in conducting its operations described above, had gross revenue in excess of \$100,000, and purchased goods and materials valued in excess of \$5000 and caused said goods and materials to be shipped from points located outside the State of Michigan directly to its Michigan facilities.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Council 25, American Federation of State, County and Municipal Employees, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

CeDel Murff	Owner
Diane Brown	Office Manager
Barbara McGresham	Human Resource Manager

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time direct care workers employed by the Respondent at its facilities located at New Link, Ltd., 14531 Vaughn, Detroit, Michigan, Cherlayne, Inc., 305 E. Grand Boulevard, Detroit, Michigan, Inn Site, Inc., 6821 Sarena, Detroit, Michigan, Forrer Community Living Center, Inc., 19950 Forrer, Detroit, Michigan, and Lafayette Special Care Center, Inc., 1256 Lafayette, Lincoln Park, Michigan; but excluding guards and supervisors as defined in the Act.

On March 8, 2004, in Case 7-RC-22601, the National Labor Relations Board certified the Union as the exclusive collective-bargaining representative of the unit.

At all times since March 8, 2004, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

On June 21, 2004, the Respondent, at the New Link facility, through its agent, Barbara McGresham, coercively induced employees to withdraw currently pending unfair labor practice charges filed against the Respondent with the Board and accept a change in shift or face discharge.

The Respondent, at the New Link facility, through its agent, CeDel Murff, changed the job duties of employee Catherine King by the following conduct:

- (a) in about late March 2004, by eliminating her driving responsibilities;
- (b) in about early April 2004, by removing her as medication coordinator and reducing her wages by 10 cents an hour.

The Respondent engaged in the conduct described above because Catherine King engaged in activities on behalf of and in support of the Union, and to discourage employees from engaging in these and other concerted protected activities.

On about June 21, 2004, the Respondent, by its agent Barbara McGresham, at the New Link facility, bypassed the Union and dealt directly with employees in the unit by encouraging employees to accept a change from day to afternoon shift.

The Respondent implemented changes in Catherine King's job duties, title, and wages, and dealt directly with employees regarding changes in their shifts, without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct on the unit. The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

On June 22, 2004, the Union, by letter, requested that the Respondent furnish it with information regarding medical certification submitted by, medical complications, medical errors committed by, and any recipient rights complaints involving the work performance of Catherine King, and a list of all dates and times that recipient rights came into the New Link facility in the previous 18 months, and the results of such visits.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive bargaining representative of the unit.

Since June 22, 2004, the Respondent has failed and refused to provide the Union with the requested information described above.

CONCLUSIONS OF LAW

1. By coercively inducing employees to withdraw unfair labor practice charges filed with the Board and by informing them that they must accept a change in shift or face discharge, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby violated Section 8(a)(1) of the Act.

2. By changing the job duties, title, and rate of pay of employee Catherine King, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. Further, the Respondent has failed and refused to bargain collectively and in good faith with the Union as the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act, by implementing changes in Catherine King's job duties, title, and rate of pay, without providing the Union with notice and an opportunity to bargain; by bypassing the Union and dealing directly with employees by encouraging them to accept changes in their shifts; and by failing and refusing to provide the Union with information that is necessary for, and relevant to, the Union's role as the exclusive collective-bargaining representative of the unit.

The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3), (5), and (1) of the Act by unilaterally changing Catherine King's job duties, title, and rate of pay, we shall order the Respondent to restore her to her previous wage rate and job duties and former position of medication coordinator or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed, and to make her whole for any loss of earnings and other benefits she suffered as a result of the discrimination against her. Backpay shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to remove from its files all references to the changes in Catherine

King's job duties, title, and rate of pay, and to notify her in writing that this has been done and the changes will not be used against her in any way.

In addition, we shall require the Respondent to furnish the Union with the information it requested on June 22, 2004.

ORDER

The National Labor Relations Board orders that the Respondent, New Link, Ltd., Cherlayne, Inc., Inn Site, Inc., Forrer Community Living Ctr., Inc., and Lafayette Special Care Ctr., Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively inducing employees to withdraw unfair labor practice charges filed with the Board and accept a change in shift or face discharge.

(b) Changing employees' wages, hours, or other terms and conditions of employment, or otherwise discriminating against employees, because they support Council 25, American Federation of State, County and Municipal Employees, AFL-CIO, or any other labor organization, and engage in protected concerted activities, or to discourage employees from engaging in such activities.

(c) Failing and refusing to bargain with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit, by unilaterally changing employees' wages, hours, or other terms and conditions of employment, without providing the Union with notice and an opportunity to bargain. The appropriate unit is:

All full-time and regular part-time direct care workers employed by the Respondent at its facilities located at New Link, Ltd., 14531 Vaughn, Detroit, Michigan, Cherlayne, Inc., 305 E. Grand Boulevard, Detroit, Michigan, Inn Site, Inc., 6821 Sarena, Detroit, Michigan, Forrer Community Living Center, Inc., 19950 Forrer, Detroit, Michigan, and Lafayette Special Care Center, Inc., 1256 Lafayette, Lincoln Park, Michigan; but excluding guards and supervisors as defined in the Act.

(d) Bypassing the Union and dealing directly with unit employees regarding wages, hours, or other terms and conditions of employment.

(e) Failing and refusing to provide the Union with information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive bargaining representative of the unit.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, restore Catherine King to her previous wage rate and job duties and to her former position as medication coordinator or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Catherine King whole for any loss of earnings and other benefits suffered as a result of the unlawful changes in her job duties, title, and rate of pay, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any and all references to the unlawful changes in Catherine King's job duties, title, and rate of pay, and within 3 days thereafter, notify her in writing that this has been done, and that the unlawful changes will not be used against her in any way.

(d) Furnish the Union with the information it requested on June 22, 2004.

(e) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit set forth above.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its New Link facility in Detroit, Michigan, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 2004.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT coercively induce employees to withdraw unfair labor practice charges filed with the Board and accept a change in shift or face discharge.

WE WILL NOT change employees' wages, hours, or other terms and conditions of employment, or otherwise discriminate against employees, because they support Council 25, American Federation of State, County and Municipal Employees, AFL-CIO, or any other labor organization, and engage in protected concerted activities, or to discourage employees from engaging in such activities.

WE WILL NOT fail and refuse to bargain with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit, by unilaterally changing employees' wages, hours, or other terms and conditions of employment, without providing the Union with notice and an opportunity to bargain. The appropriate unit is:

All full-time and regular part-time direct care workers employed by the Respondent at its facilities located at New Link, Ltd., 14531 Vaughn, Detroit, Michigan,

Cherlayne, Inc., 305 E. Grand Boulevard, Detroit, Michigan, Inn Site, Inc., 6821 Sarena, Detroit, Michigan, Forrer Community Living Center, Inc., 19950 Forrer, Detroit, Michigan, and Lafayette Special Care Center, Inc., 1256 Lafayette, Lincoln Park, Michigan; but excluding guards and supervisors as defined in the Act.

WE WILL NOT bypass the Union and deal directly with employees regarding wages, hours, or other terms and conditions of employment.

WE WILL NOT fail and refuse to furnish the Union with information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, restore Catherine King to her previous wage rate and job duties and to her former position as medication coordinator or, if that position no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Catherine King whole for any loss of earnings and other benefits suffered as a result of the unlawful changes in her job duties, title, and rate of pay, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any and all references to the unlawful changes in Catherine King's job duties, title, and rate of pay, and within 3 days thereafter, notify her in writing that this has been done and that the unlawful changes will not be used against her in any way.

WE WILL furnish the Union with the information it requested on June 22, 2004.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit set forth above.

NEW LINK, LTD., CHERLAYNE, INC., INN SITE, INC., FORRER COMMUNITY LIVING CTR., INC., AND LAFAYETTE SPECIAL CARE CTR., INC.